

California Fair Political Practices Commission

MEMORANDUM

To: Chairman Getman and Commissioners Swanson, Knox, Downey and Scott

From: Mark Krausse, Acting Executive Director
Luisa Menchaca, General Counsel
Larry Woodlock, Senior Commission Counsel

Re: Status memo on Los Angeles City Ethics Commission request to revisit
In re Fontana

Date: August 31, 2001

BACKGROUND

The Cortese-Knox Local Government Reorganization Act (Cortese-Knox Act)¹ provides a detailed framework for the creation, expansion, contraction and abolition of local government and special district boundaries. This collection of statutes sets forth the composition of and delegates authority to local agency formation commissions (LAFCOs) in 57 of California's 58 counties.² Although some LAFCO-approved boundary change proposals can occur without a public vote, most--including the procedure known as secession--require voter approval.

The Political Reform Act (the "Act") requires the disclosure of contributions received and expenditures made in support of or in opposition to a measure.³ The Commission's 1976 opinion *In re Fontana*, 2 FPPC Op. 25, held that a LAFCO boundary change proposal is not a "measure" under the PRA's definition until it is submitted to the voters. Based on that interpretation, the Commission has advised that no reporting obligation exists until a measure is placed on the ballot. Footnote 5 of the *Fontana* opinion provides, however, that once a measure is placed on the ballot, all contributions received and expenditures made "in anticipation of the measure being placed on the ballot" must be reported.

REQUEST

In September of 1999, the Los Angeles Ethics Commission requested that the FPPC revisit its *Fontana* opinion for the purpose of requiring earlier reporting of contributions and expenditures in the LAFCO measure context. Of particular concern at that time were three local

¹ Gov. Code § 56000 et seq.

² As a consolidated city and county, San Francisco does not have a LAFCO.

³ Gov. Code §§84202.3, 84203, 84203.5, 84204, and 84211.

incorporation drives that proposed the secession of particular parts--the San Fernando Valley, San Pedro/Harbor and Hollywood--of the City of Los Angeles.⁴

In response to this request, the FPPC voted in April of 2000 to forgo a reexamination of *Fontana* in light of a legislative amendment to the Cortese-Knox statutes to require earlier reporting outside the Political Reform Act. At the time the FPPC took its action, AB 2838 (Hertzberg) was pending before the state Legislature. The bill contained the recommendations of the Commission on Local Governance for the 21st Century, a body convened in 1997 to study local agency boundary and regional governance issues. Assembly Bill 2838 was enacted with the following three provisions related to political reporting in the LAFCO process:

1. Government Code Section 56100.1⁵ authorizing LAFCOs to require, through their written policies and procedures, the disclosure of contributions and expenditures as those terms are defined in the Act.
2. Language in Subdivision (b) of Section 56300 requiring LAFCOs to hold public hearings to discuss the adoption of policies and procedures to require the disclosure of contributions, expenditures and independent expenditures as authorized by Section 56100.1.⁶
3. Language at Section 56700.1 requiring that contributions and expenditures in support of, or opposition to, a LAFCO proposal "be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate."

STATUS

The Los Angeles County LAFCO held a public hearing on March 14, 2001, as required by Section 56300, but did not vote on whether to enact policies and procedures regarding contribution and expenditure reporting. Instead, the LAFCO formed a three-member subcommittee to analyze alternative policies, develop a proposal for reporting in the area and return to the commission with recommendations.⁷ As of the writing of this memorandum, the subcommittee has made no recommendations and has no deadline for doing so.

According to LA County LAFCO staff, several procedures in the boundary change process are still pending. The last of these, provided all interim steps are approved, is a ballot

⁴ Recent reports indicate that the Valley and San Pedro/Harbor area secession questions will each be put to a vote on the November 2002 ballot, but that the Hollywood proposal has been stalled. "L.A. LAFCO Looks Toward a Fall 2002 Breakup Vote," *Los Angeles Times*, August 9, 2002.

⁵ All further references are to the Government Code, unless otherwise noted.

⁶ Subdivision (c) of Government Code Section 86100.1 similarly requires LAFCOs with pending reorganization proposals to hold public hearings to discuss policies and procedures to require lobbying disclosure.

⁷ See minutes of March 14, 2001 Los Angeles County LAFCO meeting.

summary of the proposal. If the measure is to be on the November 2002 ballot, the deadline for that summary is July 15, 2002. Several procedural steps must occur before that date. In addition, there is the very likely possibility of litigation that may delay or prevent the proposal from being placed on the ballot. Under *Fontana*, once a LAFCO proposal is placed on the ballot by the conducting authority (a city or, in this instance, county), contributions and expenditures in support of or opposition to the measure must be reported, *including amounts collected and spent before the proposal was placed on the ballot*.

The staff of the Los Angeles City Ethics Commission has related that commission members have not focused on this issue for some months. We will continue to monitor the situation and report to the Commission if its involvement is requested.